

St. Jude Industrial Park Board and United Steelworkers of America, AFL-CIO, CLC. Case 14-CA-16854

28 March 1984

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER**

Upon a charge filed by the Union 21 July 1983, the General Counsel of the National Labor Relations Board issued a complaint 28 July 1983 against St. Jude Industrial Park, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act.

The complaint alleges that on 12 July 1983, following a Board election in Case 14-RC-9619, the Union was certified as the exclusive collective-bargaining representative of the Respondent's employees in the unit found appropriate. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g), amended Sept. 9, 1981, 46 Fed.Reg. 45922 (1981); *Frontier Hotel*, 265 NLRB 343 (1982).) The complaint further alleges that since 18 July 1983 the Respondent has refused to bargain with the Union. On 8 August 1983 the Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On 22 August 1983 the General Counsel filed a Motion for Summary Judgment. On 25 August 1983 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer to the complaint, the Respondent admits, inter alia, that it has refused to bargain with the Union but denies, inter alia, that it is an employer engaged in commerce and that it is subject to the Board's jurisdiction. Further, the Respondent affirmatively pleads that it and its membership constitute and are an agency and instrumentality created by and an integral part of the city of New Madrid, Missouri, a municipal corporation not subject to the Board's jurisdiction. In her Motion for Summary Judgment, counsel for the General Counsel alleges that the Respondent seeks to relitigate issues considered in the underlying representation case and that there are no factual issues warranting a hearing. We agree.

Our review of the record in this case, including the record in Case 14-RC-9619, reveals that after a hearing the Board issued a Decision and Direction of Election (not reported in Board volumes) on 27 May 1983 in which it found, inter alia, that the Respondent is not exempt from the Board's jurisdiction.¹ In accordance with the Decision and Direction of Election, an election was conducted on 24 June 1983 and the tally of ballots furnished to the parties after the election showed 4 votes cast for, and 3 against, the Union. There was one challenged ballot which was sufficient to affect the results of the election. No objections to the election were filed.

On 12 July 1983 after an investigation, the Regional Director issued a Supplemental Decision and Certification of Representative in which he sustained the challenge to the ballot and certified the Union as the collective-bargaining representative of the unit.

On or about 18 July 1983 the Union, by telephone, requested the Respondent to bargain collectively with it as the exclusive representative of the unit. On the same date, by telephone and by letter dated 19 July 1983, the Respondent informed the Union that it was refusing to bargain in order to obtain a review of the Board's decision by an appellate court.

As noted above, in its answer to the complaint in this case, the Respondent admits it has refused to bargain with the Union for the purpose of collective bargaining, but denies that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, or that other sections of the Act alleged in the complaint have any application to it. Further, the Respondent affirmatively asserts that it and its membership constitute and are an agency and instrumentality created by and an integral part of the city of New Madrid, Missouri, a municipal corporation not subject to the Board's jurisdiction under the provisions of Section 2(2) of the Act. Thus, it appears that Respondent is attempting to raise issues in this case which were raised in the underlying representation case.

It is well settled that in the absence of newly discovered and previously unavailable evidence or special circumstances, a respondent in a proceeding

¹ The Board found that the Respondent is engaged in commerce under the Act and that it should assert jurisdiction based on its decision in *St. Jude Industrial Park Board*, 265 NLRB 579 (1982). As stated in the Decision and Direction of Election in Case 14-RC-9619, Member Hunter agrees that the Respondent is not exempt from the Board's jurisdiction because there was insufficient record evidence to conclude that the Board should decline jurisdiction in accord with his dissent in *Wordsworth Academy*, 262 NLRB 438 (1982). Member Hunter would not adopt the rationale in *St. Jude*, supra.

galleging a violation of Section 8(a)(5) is not entitled to relitigate issues that were or could have been litigated in a prior representation proceeding. See *Pittsburgh Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941); Secs. 102.67(f) and 102.69(c) of the Board's Rules and Regulations.

All issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any issue that is properly litigable in this unfair labor practice proceeding. Accordingly we grant the Motion for Summary Judgment.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, an unincorporated entity, is engaged in the business of promoting industrial development within the boundaries of the St. Jude Industrial Park in New Madrid, Missouri. Its principal office and place of business is located in New Madrid, Missouri, where it annually purchased and caused to be transported and delivered at its place of business goods, materials, and supplies valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were transported and delivered to its place of business in New Madrid, Missouri, directly from points located outside the State of Missouri. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held 24 June 1983 the Union was certified 12 July 1983 as the collective-bargaining representative of the employees in the following appropriate unit:

All production and maintenance employees employed by the Respondent at its New Madrid, Missouri, operation EXCLUDING office clerical and professional employees, guards and supervisors as defined in the Act.

² Chairman Dotson did not participate in the underlying representation proceeding.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since 18 July 1983 the Union has requested the Respondent to bargain, and since 18 July 1983 the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

By refusing on and after 18 July 1983 to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, St. Jude Industrial Park Board, New Madrid, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Steelworkers of America, AFL-CIO, CLC, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the fol-

lowing appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All production and maintenance employees employed by the Respondent at its New Madrid, Missouri, operation EXCLUDING office clerical and professional employees, guards and supervisors as defined in the Act.

(b) Post at its facility in New Madrid, Missouri, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

³ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Steelworkers of America, AFL-CIO, CLC, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All production and maintenance employees employed by the Employer at its New Madrid, Missouri, operation EXCLUDING office clerical and professional employees, guards and supervisors as defined in the Act.

ST. JUDE INDUSTRIAL PARK BOARD